

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1199 OF 2006

Shri Chintaman P. Bhandari .. Petitioner

versus

Smt.Muktabai Budha Bhandre .. Respondent

...

Mr.D.J. Deshmukh for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 2nd March 2006.

P.C.:

1. Heard learned counsel for the petitioner.

2. Apart from the fact that I am not inclined to interfere on the ground that the petition is directed against an interlocutory order, I am satisfied that the impugned order is correct and needs no interference.

3. The respondents had filed a suit against the petitioner for possession alleging that they were the owners and the petitioner was a trespasser. In the plaint they narrated that their father earlier was a protected tenant and had purchased the property under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (for short "B.T. & A.L. Act"). The petitioner resisted the suit inter alia contending that respondent was not a tenant but it was the petitioner's grandfather who was the tenant of the suit property. He therefore, prayed that an issue be framed whether the respondents (plaintiffs) were tenants or not and also prayed for framing of other consequential issues.

4. It is the case of the plaintiffs that they had become the owners of the suit property on account of statutory purchase under the provisions of BT & AL Act. A purchase certificate is required to be issued under section 32M of the BT & AL Act and the certificate is conclusive. No enquiry can be made by the civil court as to whether the certificate u/s.32M is correctly granted or not. Furthermore, once a person becomes an owner under the provisions of BT & AL Act, it is

immaterial for how long before the tiller's day he was a tenant. Therefore, no enquiry is called for as to whether the respondents were tenants and how long. The averment made in the plaint that the respondents' fathers was a tenants in the long past is merely an incidental statement for which no issue arises. In my view, the issues do not arise for decision in the suit.

5. There is no merit in the petition which is hereby rejected.

(D.G. KARNIK, J)